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# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Oil Gas and Mining

JOHN R. BAZA  
Division Director

December 31, 2008

CERTIFIED MAIL  
7005 2570 0000 4801 7482

Cliff Read  
Rock and Stone LLC  
P.O. Box 1947  
Park City, UT 84060

Subject: Findings of Fact, Conclusions, Order for MC2007-03-02-01, and FTACO 2007-03-04, Strawberry Quarry, Duchesne County, Utah, Rock and Stone, LLC

Dear Mr. Read:

On September 18, 2007, an Informal Conference was held to review the fact of the violation and the proposed fines for state violation MC2007-03-02-01 and Failure To Abate CO 2007-03-04. As a result of a review of all pertinent data and facts, including those presented in the Informal Conference, the attached documents constitute the findings of fact, conclusions, order, and finalized assessment.

**Cessation Order MC2007-03-02-01 has been upheld and the final assessment is \$352.00. CO 2007-03-04 is vacated and the assessed fine is voided.**

Appeal Provisions: Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal of this finding to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalty with the Division within thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

Sincerely,

Mary Ann Wright  
Associate Director, Mining  
Assessment Conference Officer

Enclosures:

Findings Final assessment

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UTAH DIVISION OF OIL, GAS AND MINING  
WORKSHEET FOR **FINAL** ASSESSMENT OF PENALTIES

COMPANY: Rock-it-Stone/Rock and Stone; PERMIT: Strawberry Quarry, Duchesne County  
VIOLATION: MC2007-03-02-01

ASSESSMENT CONFERENCE OFFICER: Mary Ann Wright

	Proposed Assessment	Informal Conf Final Assessment
(1) History/Previous Violations	<u>10</u>	<u>10</u>
(2) Seriousness	<u>14</u>	<u>14</u>
(3) Negligence	<u>15</u>	<u>2</u>
(4) Good Faith	<u>0</u>	<u>-10</u>
Total Points	<u>39</u>	<u>16</u>

TOTAL Final Informal Conference ASSESSED FINE     \$ 352.00

NARRATIVE: Change is made in this final assessment of conducting mining activities without permit fees or a bond. This violation was assessed at a proposed amount of 39 points and \$2,090.00. The Operator was not paying attention to the requirements of the mining permit. The operator should have known to stay in contact with the division and pay permit fees. It is not certain whether the operator had sufficient notice about the need to post a bond. Not paying permit fees in 2006 and earlier in 2004, indicates indifference to the rules or lack of reasonable care by not tending to the business aspects required by the state of Utah. The Operator is considered negligent on fees, but the points are reduced in regard to not posting the bond since there was difficulty and confusion on the division's part as well. Good faith points are awarded since the CO was very difficult to abate. In fact, a second FTA CO was issued for not complying within the 90-day time frame required under the rules. However, the permittee took more than minimal actions to get a bond in place and bonds can easily take the 90 days allowed for compliance. The permittee could have asked for an extension but since there was confusion about the responsible party to communicate with, and the division failed to send out the three other notices, consideration is given to the operator on Good Faith points.

(Brief explanation for any changes made in assignment of points and any additional information that was available after the proposed assessment.)

BEFORE THE DIVISION OF OIL, GAS AND MINING  
**MINERALS REGULATORY PROGRAM**  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH

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IN THE MATTER OF THE Rock-it- stone/Rock and Stone, LLC's Strawberry River Quarry, Duchesne COUNTY, UTAH	:  :  :	INFORMAL CONFERENCE For MC2007-03-02-01, and Failure to Abate (FTA) CO 2007-03-04 FINDINGS, CONCLUSIONS AND ORDER CAUSE NO. S0130008
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On September 18, 2007, the Division of Oil, Gas and Mining ("OGM") held an informal conference concerning the Fact of Violation and the Assessment for Cessation Orders, MC-07-03-02 and 07-03-04, issued to Rock-it-Stone's Strawberry River Quarry, Duchesne County, Utah. The following attended for the Division: Paul Baker and Daron Haddock.

Presiding: Mary Ann Wright  
Associate Director, Mining  
Division of Oil, Gas and Mining

Petitioner: Rock-it-Stone/Rock and Stone: Shannon Peatross and Cliff Read

The Findings, Conclusions, and Order in this matter are based on information provided by the Petitioner and the Division in connection with this informal conference, and on information in the files of the Division.

**FACTS PRESENTED: Facts of the Cessation Orders and Assessment of the Violations**

1. On September 18, 2007, the Division of Oil, Gas and Mining (OGM or Division) held an Informal Conference concerning the Cessation Orders issued at the Strawberry River Quarry, Duchesne County, Utah.
2. Cessation Order MC-07-03-02-01 was issued on April 18, 2007 for "Failure to submit a reclamation surety in a form and amount acceptable to the division and Failure to pay permit fees. Operating on a suspended permit". A Failure-to-abate Cessation Order MC07-03-04 was issued June 26, 2007 and terminated on June 27, 2007.
3. In a letter received 8/13/07, Cliff Read, Manager of Rock and Stone, LLC requested an Informal Conference for both COs. Notice of the informal conference was properly given, pursuant to Utah Code Ann. Section 40-8-9 and Utah Administrative Rule R647-6-102.

4. At the informal conference, the following information was presented to the Conference Officer.
5. Paul Baker provided a chronology of events beginning at June 8, 2006 thru August 6, 2007. It detailed that one letter had been sent in 2006 to Shannon Peatross, the contact on record with the division. Further, the division does not have a record of three further letters that were sent to other operators throughout 2006 and 2007 of the new law requiring small mine operators to post a bond. Thus only one notice to post a bond went to Mr. Peatross.
6. Mr. Peatross says he did not receive the one letter of notice about the bonding requirements. Mr. Read explained that Rock-it-Stone dissolved and became Rock and Stone. He tried to get a bond during the month of April after the first CO was issued. A bond (Letter of Credit/ LOC) was obtained from Zion's Bank and delivered to the division on May 2. Two circumstances resulted in the bond getting lost/delayed once it got to OGM offices: a department (not a division) employee signed for the LOC; and there was confusion about the name of the company. The permit fee was paid for 2006 in April 2007, but then the check came back to the division marked with insufficient funds on May 24.
7. Another letter and phone call from the division to Mr. Peatross, asked him to have the LOC placed in the correct operator name in May and June. Several back and forth communications were not going through between the operator and the division due to the division mailing to an outdated contact and the confusion of the name change which the division had not been notified about. Refer to chronology.
8. By June 25, 2007, 90 days after CO issuance, neither the permit fee nor the bond had been taken care of by the operator. On June 26, 2007, the FTACO was issued.
9. By June 27, 2007, all matters had been handled, including the filing of a name change.

#### **FINDINGS AND CONCLUSIONS**


1. It was clearly established by the division that mining was taking place without permit fees or a bond.
2. It was established by both parties that communications had failed due to a lack of notification of name and contact changes that had occurred with the mining entity, but about which the division was unaware.
3. Under the R647 Mineral rules it is the operator's responsibility to pay permit fees and post a bond for reclamation, or face compliance action, suspension of the permit to mine, or complete withdrawal of the mining permit.
4. The issuance of the first Cessation Order MC 2007-03-02-01 should be upheld.
5. It was apparent from the chronology that efforts were being made by the operator to respond to the first CO, therefore the Failure to Abate CO should be vacated.

## ORDER

NOW THEREFORE, it is ordered that:

1. Cessation Order MC2007-03-02-01, issued on April 18, 2007, is hereby upheld.
2. The fine is hereby reassessed as shown on the attached final assessment.
3. FTA CO MC-03-04 is hereby vacated. The fine is voided.

SO DETERMINED AND ORDERED this 31<sup>st</sup> day of December, 2007.



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Mary Ann Wright, Associate Director, Mining  
Conference Officer  
Division of Oil, Gas and Mining  
State of Utah

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